



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

April 16, 2019

The following is provided in response to your letter dated March 14, 2019 and in follow up to Chairman Ring's initial response dated March 22, 2019.

Below and attached are the answers to your requests:

1. *Copies of any draft solicitation, purchase order, contract, or other procurement vehicle for contracting with a private entity regarding the public comments submitted in response to the proposed rule for determining joint employer status or any future rulemakings.*

The final Statement of Work (SOW) and associated drafts are attached to this letter. As the contract has not yet been awarded, the Agency does not yet have a contract or purchase order pertaining to this matter.

2. *Documents describing or referencing any proposal, plan, arrangement, outline, suggestion, or other effort relating to contracting review of comments on the joint employer rulemaking or any future rulemakings, including any emails or memorandum.*

The Agency executed a search for all responsive records related to contracting the review of comments submitted in response to the joint employer Notice of Proposed Rulemaking (NPRM). The search included all Board Members, Board Member Chief and Deputy Chief Counsels, key members of the Chairman's staff, the Solicitor's Office, the Executive Secretary's Office, and the Office of the Chief Financial Officer. The search targeted Agency documents from the date of the NPRM (September 13, 2018) to the date of the search (April 1, 2019). The CD accompanying this letter contains those documents responsive to your request.

The Office of the Solicitor provided legal advice to the Board related to the joint-employer NPRM that is responsive to this request. While the analysis is protected by attorney-client privilege and contains work product material, we invite your staff to view the document and associated emails in an in-camera review.

Four documents have been withheld by the Agency on the basis that they contain Agency deliberative process and attorney work product material. Two of these documents reflect exchanges between the Solicitor and his staff while drafting the memorandum to the Board, referenced above, and a third involves a communication from Counsel to their Board Member regarding this memorandum. The fourth document reflects communications involving draft coding categories for comments submitted in response to the joint-employer NPRM. The Agency additionally has withheld all documents relating to contractor bid, proposal, and source selection information.

Minimal redactions have been made to documents responsive to this request in order to protect personally identifiable information (PII), contractor information, or unrelated matters pending before the Board.

3. *Copies of any legal determination the Board has made as to its authority to engage a private entity involving the review of public comments, including analysis of how the Board should avoid issues of a private entity performing duties that are "inherently governmental" pursuant the Federal Activities Inventory Reform Act of 1998, Office of Management and Budget (OMB) Circular A-76, and other existing guidance on "inherently governmental" functions.*

The Solicitor's memorandum, referenced in response to the second document request, above, is also responsive to this request.

4. *The current status of any effort to contract with a private entity for reviewing public comments submitted in response to the proposed rule for determining joint employer status or any future rulemaking, including the scope and anticipated timeframe for when the Board would enter into such an agreement.*

The Contracting Officer is currently processing the evaluations and recommendation of the technical team. After the review and processing is completed, a contract will be awarded.

5. *The total amount that the Board intends to spend on a contract with a private entity involving the public comments submitted in response to the proposed rule for determining joint employer status or any future rulemakings.*

The Board estimated that it would spend \$52,294.40 for the contract to provide Legal Support Services, which includes paralegal and/or law clerk assistance with the review of comments submitted in response to the joint-employer NPRM.

6. *A detailed description of any efforts the Board has taken or will take with the National Labor Relations Board Professional Association (NLRBPA) and the National Labor Relations Board Union (NLRBU) to bargain over the impact and implementation of any contracting out of work that is normally performed by professional staff, pursuant to federal law and its collective-bargaining agreements with the NLRBPA and the NLRBU.*

The Board has no obligation to bargain over its decision to contract out this work.

7. *A detailed description of any efforts the Designated Agency Ethics Official has taken or plans to undertake to evaluate Board solicitations, contracts, purchase orders, or other procurement vehicles that provide for private entities to review comments on rulemakings in order to ensure that such entities do not have conflicts of interest arising from their filing of comments, their membership in any entity that has filed comments, or their potentially being impacted from the rulemaking on joint employer status or future rulemakings.*

The Designated Agency Ethics Official has not taken any steps to and has not made any plans to evaluate Board solicitations, contracts, purchase orders, or other procurement vehicles that provide for private entities to review comments on the joint-employer rulemaking.

8. *Copies of any communications between the Board, including any employee of the Board, and any private entity involving the potential for contracting out any work regarding the public comments submitted in response to the proposed rule for determining joint employer status or any future rulemaking.*

These documents are included in the Agency's search for all responsive records related to contracting for the review of comments submitted in response to the NPRM. They are produced in documents Bates numbered 000039, 000042, 000043, 000046, 000450, 000448, 000449, 000451, 000535, 000536.

9. *Copies of any communications between the Board, including any employee of the Board, and any individual working in the Office of Management and the Budget, the Office of Personnel Management, or the White House, including the Domestic Policy Counsel, regarding any entity to contract with a private entity involving public comments submitted to the Board.*

There are no documents responsive to this request.